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In *Ex. Parte Blackington*, 245 Fed. Rep. 801, a somewhat shocking case was presented. Relator had enlisted in the National Guard and was afterward drafted into the Federal Service. His petition claims that he was below the required height and had other serious physical disqualifications. He was favorably passed upon for the National Guard Service by a medical officer who was prejudiced against him and who had declared that he would "get even" with petitioner for some prior occurrence. Petitioner knew of these facts at the time he volunteered and made no objection; but after he was drafted into the National Army he consulted other physicians who advised him that he could not safely perform military duty. Meantime he had been examined and passed upon favorably by the Federal medical officers for the National Service and though he endeavored persistently to be discharged therefrom, he failed. The Court dismissed the petition and remanded the petitioner to the military authorities, largely upon the ground that the enlistment was voluntary, that neither the party enlisting nor the military authorities occupied a fiduciary relationship with each other, and that the purpose of the examination is not to give to the applicant assurances that he is physically fit for military service, but only to prevent undesirable men from getting into the army. *U. S. v. Cottingham*, 1 Rob. (20 Va.) 615. Perhaps this decision was sound. Perhaps there were facts as brought out upon the petition and hearing in open court which tended to convince the Court that petitioner was endeavoring to shirk. But upon the allegations of the petition as reported by the Court it would seem that here was a case calling for a re-examination, if the law and rules permitted it.

The objections urged against the Draft Law and its administration in all the cases here noted, except the last one, are obviously trivial or worse. An examination of the names of the score or more contestants would cause one to suspect that in some cases at least their obstructing efforts were part of that treacherous hostile propaganda, with which we now know our country has been menacingly infiltrated, both before and since the beginning of the War. The patriotic and clear-visioned pronouncement of our courts in these cases is a cause for sincere appreciation and congratulation.

H. M. B.

INTERSTATE COMMERCE COMMISSION—INTRASTATE RATES.—The marvelous possibilities for collision between State and Nation involved in our dual form of government are nowhere better or more often exhibited than in commerce regulation. We have long been learning the definition of the commerce which the constitution gives Congress power to regulate. It is only recently that we are finding how this power reaches over into purely intrastate business done by a carrier also engaged in interstate commerce. That nearly all rail carriers are now engaged in such business, even when their lines are wholly intrastate, has been often illustrated under the Second Employer's Liability Act. In *Employers' Liability Cases*, 207 U. S. 463, Congress was warned off the State preserves, only to prove that the First Act was wrong, not in its sweep, but in its failure to save to the states in

words what seems lost to them in fact. The Second Act stands, *Second Employers' Liability Cases*, 223 U. S. 1, and seems to reach practically every railway employee, because however much of his time is devoted to purely intrastate business, some at least is almost sure to touch interstate traffic, and this is enough to bring him under control of Federal law. See the very recent case of *Cholerton v. D. J. and C. Ry.* (Mich., 1917), 165 N. W. 606, holding that a track hand of a railroad wholly in the State of Michigan is under Federal Act.

The recent case of *Illinois Central R. R. Co. v. Public Utilities Commission of Illinois* (1918), 38 Sup. Ct. 170, illustrates the same collision of State and Federal regulation in the field of rate making. This is merely the latest in a series of cases before that court. Evidently it is not the last. Of the cases already decided we may review a few. The leading case of *Smyth v. Ames* (1898), 169 U. S. 466, established the general doctrine that State Regulation of rates was so connected with interstate rates that no state could fix intrastate rates so low as to compel the railroad to recoup state losses out of interstate business. This decision might have rested solely on the Fourteenth Amendment, on the ground that low rates might amount to a practical confiscation of property. It did not even intimate that the Federal law might directly fix purely intrastate rates. The Minnesota Rate Cases, (1913), 230 U. S. 352, 397, 418, 430, raised squarely this question: "Was the State debarred from fixing reasonable rates on traffic, wholly internal, as to all state points so situated that as a practical consequence the carriers would have to reduce the rates they had made to competing points without the State, in order to maintain the volume of their interstate business, or to continue the parity of rates, or the relation between rates as it had previously existed?" The court asserted the plenary power of Congress to regulate commerce among the several states, and sweepingly held the execution by Congress of this power was "not to be denied or thwarted by the commingling of interstate and intrastate operations." The court declined to decide whether Congress might control intrastate rates if they tended to give an undue or unreasonable preference to any locality, or to unreasonably discriminate between localities in different states. There was, however, a strong affirmative inference in various paragraphs of the opinion, but the court said if such were the case it "would be primarily for the investigation and determination of the Interstate Commerce Commission and not for the Courts".

The next year the question actually reached the Supreme Court in the *Shreveport Rate Case*, 234 U. S. 342. Interstate rates between Shreveport, La., and Texas points were higher than Texas rates between Dallas and Houston, Texas, and the same Texas points, to the evident disadvantage of Shreveport. The Interstate Commerce Commission ordered the roads to cease and desist from exacting higher rates from Shreveport to Dallas and Houston, and intermediate points, than are charged toward Shreveport for equal distances. To obey the roads might lower interstate rates, already found reasonable by the Interstate Commerce Commission, raise intrastate rates, fixed by the Texas Commission, or equalize by changes in each direction. Whether wisely or not, very naturally the roads chose to raise intra-

state rates, obeying the Interstate Commission and disobeying the Texas Commission. The Supreme Court sweepingly upheld the power of Congress, either directly or through a Commission, to control in all matters interstate commerce, even to the extent of setting aside intrastate rates fixed by state law, when such rates affect interstate commerce.

This decision was not accepted with good grace by the states. The later history of the Shreveport case may be read in *Eastern Texas R. R. v. Railroad Commission of Texas* (1917), 242 Fed. 300, from which it appears that the rates were still in dispute three years after the decision. The Supreme Court of South Dakota in *State v. American Express Co.*, 161 N. W. 132, showed its unregenerate spirit. Arkansas, however, recognized the full force of the decision as affecting Arkansas rates discriminating against Memphis, Tenn., *St. Louis, I. M. & S. Ry. Co. v. State* (1917), 197 S. W. 1. Meantime the South Dakota case reached the U. S. Supreme Court, *American Express Co. v. Colwell* (1917), 244 U. S. 617, where the Supreme Court of South Dakota was administered a mild rebuke for questioning the principle after the Shreveport case. As was to be anticipated, the carriers were busy trying out the possibilities of the Shreveport decision in relieving them from low rates imposed by the States. In South Dakota they had cheerfully raised state rates, not merely to the points named in the order of the Interstate Commerce Commission, but to other points as well. In so far as changes had been made beyond the order of the Commission the court found them unjustifiable.

One has only to reflect on the number of cities situated near state boundaries to see what a large portion of all intrastate rates might be brought under orders of the Interstate Commerce Commission. Especially is this true along the great boundary streams, the Mississippi and Missouri rivers. The carriers were not slow to look for holes through the defensive works erected by the states about the tariff schedules. The next case involved rates between Chicago and points on either side of the Mississippi, especially St. Louis, Mo., and East St. Louis, Illinois, and Keokuk, Ia., and Hamilton, Ill. Upon complaint of the Business Men's League of St. Louis, the Interstate Commerce Commission found that passenger fares between St. Louis and Illinois points tributary to St. Louis subject St. Louis to undue disadvantage as to East St. Louis and the same Illinois points in so far as the interstate mileage rate found to be reasonable, 2.4 cents per mile, exceeded the 2 cent rate fixed by the Illinois statute. A Keokuk association and numerous interested bodies in Illinois intervened. The Commission ordered that on reasonably direct lines between Chicago and St. Louis and Chicago and Keokuk, rates to Illinois points should be raised to the interstate rate, 41 I. C. C. R. 13. This order was promptly evaded by the traveling public, by the use of two tickets, one at intrastate rates to a point near St. Louis or Keokuk, and one at interstate rates for the remaining distance. The Commission accordingly enlarged the order to include such intermediate points. 40 I. C. C. R. 503. To make a thorough job the railroads concluded the only way to avoid discriminations and evasions was to raise all Illinois passenger rates to 2.4 cents a mile. This they proceeded to do. It would be but another step to

apply the same principle to freight rates and state rate regulation would be at an end.

In *Illinois Central R. R. Co. v. Public Utilities Commission of Illinois*, *supra*, the Supreme Court does not settle this question. It does decide that the order actually made by the Commission is so indefinite and uncertain as to render it inoperative as to intrastate rates established by the Illinois statute. It will never be presumed that "Congress intends to supersede or suspend the exercise of the reserved powers of a state, even where that may be done, unless and except so far as its purpose to do so is clearly manifested". The rule that applies to Congress governs also an order of a subordinate agency of Congress, the Commission. It now remains to be seen whether the Commission will make a rule so clear as properly to raise the question of the Federal power to supersede all state regulation of rates. The complications of language in the orders made in the instant case show the difficulties in making such an order clear and full without covering all state rates.

E. C. G.

ACQUIRING JURISDICTION IN GARNISHMENT PROCEEDINGS.—Garnishment is a proceeding provided by statutes found in every state, for the purpose of laying hold of something belonging to a defendant or judgment debtor but actually in the hands of someone else, and appropriating it to pay the debt due from the defendant or judgment debtor. If the proceeding is instituted ancillary to a pending suit, and before judgment, it is a species of attachment. If it is issued ancillary to a judgment already recovered it is a species of execution. If the third person summoned as garnishee is merely bailee of property belonging to the judgment debtor or defendant the garnishment differs from an actual levy into the hands of the sheriff under an attachment or execution only in the fact that the actual custody and possession remain with the garnishee instead of passing to the hands of the sheriff. If the garnishee has nothing in his hands belonging to the principal defendant and is only indebted to him, the garnishment merely stops payment, creates a lien on the sum due, and eventually causes the garnishee to pay into court for the benefit of the plaintiff instead of paying to the defendant according to his original liability. To repeat, it is in substance a seizure of the principal defendant's goods or choses in all cases, and appropriation of them to satisfaction of his obligations.

Statement of these aphorisms is prompted by the decision of the Supreme Court of Michigan in *Katt v. Swartz* (1917), 165 N. W. 717, sustaining a plea of payment into court in garnishment as an absolute bar to suit against the garnishee by his creditor, and at the same time saying that the judgment against the principal debtor (the garnishee's creditor) in the proceedings to which the garnishment was ancillary was void because the summons to the debtor in that proceeding was issued and served only four days before the return day instead of from six to twelve days before, as required by the statute.

The statement of the court that the judgment against the principal defendant was void was not necessary to the decision. The question as to the